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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,919	07/16/2003	Barry J. Silverman	7996-A03-003	8932
33771	7590	02/01/2006	EXAMINER	
PAUL D. BIANCO: FLEIT, KAIN, GIBBONS, GUTMAN, BONGINI, & BIANCO P.L. 21355 EAST DIXIE HIGHWAY SUITE 115 MIAMI, FL 33180			ARAJ, MICHAEL J	
			ART UNIT	PAPER NUMBER
			3733	
DATE MAILED: 02/01/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/620,919

Applicant(s)

SILVERMAN, BARRY J.

Examiner

Michael J. Araj

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 21 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-5,7,10,11,17-21 and 26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,7,10,11,17-21 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This office action is in response to Applicant's amendment filed 11/21/05.

#### ***Status of Claims***

Claims 1, 3-5, 7, 10, 11, 17-21 and 26 are pending. Claims 13-16 and 22-2 have been withdrawn from consideration. Claims 2, 6, 8, 9 and 12 have been cancelled.

#### ***Specification***

The disclosure was previously objected to for informalities. Applicant has successfully addressed these issues in the amendment filed on 11/21/05. Accordingly, the objection(s) to the specifications have been withdrawn.

#### ***Claim Rejections - 35 USC § 101***

Applicant has addressed all rejections under 35 USC § 101 to the Claims in the amendment filed 11/21/05. Accordingly, the Examiner has withdrawn the 35 USC § 101 rejections.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the

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subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, 7, 10, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roaf et al. (U.S. Patent No. 3,693,616) in view of Abramson (U.S. Publication No. 2004/0117016).

Roaf et al. discloses a fixation device comprising a plurality of bone plates (1 and 3) affixable to a cortical surface of a long bone, where the bone plates (1 and 3) include a plurality of threaded screw holes (7) extending there through and has at least one transverse member (11) affixable to and interposed between the plurality of bone plates (1 and 3), where the transverse member (11) has at least one screw hole (9) there through to receive attachment bone screws (15). With regard the statement of intended use and other functional statements, they do not impose any structural limitations on the claims distinguishable over Roaf et al., which is capable of being used as claimed if one so desires to do so. Roaf et al. disclosed the claimed invention except for the transverse members being positioned within a notched segment. Abramson teaches a transverse member that lies in between a slot or notch to reduce the thickness of the device (paragraph 20). It would have been obvious to one skilled in the art at the time the invention was made to construct the bone fracture fixation device of Roaf et al., with transverse members being positioned within a notched segment in view of Abramson, in order to give a better esthetic result to the device.

Claims 17-21 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roaf et al. in view of Abramson as applied to claim 1 above, and further in view of Jones (U.S. Patent No. 1,950,799).

The combination of Roaf et al. and Abramson discloses the claimed invention for the intermediate section of the transverse member being arcuate. Jones teaches the transverse member curving around the bone to provide a tighter hold. It would have been obvious to one skilled in the art at the time the invention was made to construct the combination of Roaf et al. as modified by Abramson with a curving transverse member in view of Jones, in order to have better tightening and a more snug support for the bone to heal.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 3-5, 7, 10, 11, 17-21 and 26 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's arguments, the recitation "An internal long bone fracture fixation device for the treatment of a long bone fracture" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Araj whose telephone number is 571-272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
MJA

  
**EDUARDO C. ROBERT**  
**SUPERVISORY PATENT EXAMINER**